

STATE OF INDIANA)
) SS:
COUNTY OF JACKSON)

IN THE JACKSON SUPERIOR COURT
CAUSE NO. 36501 0608-PL-14

STATE OF INDIANA,)
)
 Plaintiff,)
)
 v.)
)
EMILY WENDT, individually and doing)
business as AIR TECH DISTRIBUTING,)
)
 Defendant.)

FILED
AUG 14 2006
Sarah M. Benter
CLERK, JACKSON CIRCUIT COURT
BROWNSTOWN, INDIANA

**COMPLAINT FOR INJUNCTION, RESTITUTION, COSTS,
AND CIVIL PENALTIES**

The State of Indiana, by Attorney General Steve Carter and Deputy Attorney General Matt Light, petitions the Court pursuant to the Indiana Promotional Gifts and Contests Act, Indiana Code § 24-8-1-1 *et seq.*, Indiana Home Solicitation Sales Act, Ind. Code § 24-5-10-1 *et seq.*, and Indiana Deceptive Consumer Sales Act, Ind. Code § 24-5-0.5-1 *et seq.*, for injunctive relief, restitution, civil penalties, investigative costs, and other relief.

PARTIES

1. The Plaintiff, State of Indiana, is authorized to bring this action and to seek injunctive and other statutory relief pursuant to Ind. Code § 24-5-0.5-4(c), Ind. Code § 24-8-6-3, and Ind. Code § 24-5-10-18(2).

2. The Defendant, Emily Wendt, individually and doing business as Air Tech Distributing (hereinafter "Wendt") at all times relevant to this complaint was an individual engaged in business as a commercial seller of vacuum cleaners at 311 North Ewing Street, Seymour, Indiana 47274.

3. When, in this Complaint, reference is made to any act of Defendant, such allegations shall be deemed to mean that the principals, agents, representatives, or employees of Defendant did or authorized such acts to be done while actively engaged in the management, direction, or control of the affairs of Defendant and while acting within the scope of their duties, employment, or agency.

FACTS

4. At least since June 1, 2005, the Defendant has solicited and entered into contracts with Indiana consumers for the purchase of vacuum cleaners.

5. At least since June 1, 2005, the Defendant has sent promotional mailings to Indiana residents to generate consumer interest and promote Defendant's products.

6. On or about June 1, 2005, the Defendant sent a promotional mailing to Cynthia Powell of Seymour, Indiana (hereinafter "Powell"). The mailing included a "Draw Poker" card that included the following representations: "Instant Scratch and Win!"; "Over \$2 Million in Prizes"; and "If you match one of the Winning Hands please call the Prize Redemption Centre."

7. The prize notice mailed by the Defendants to Powell failed to include the following disclosures required by the Promotional Gifts and Contests, Ind. Code §§ 24-8-2-2 through 24-8-2-8:

- a) the name and address of the promoter and the sponsor of the promotion;
- b) the verifiable retail value and a statement of odds for each prize in immediate proximity with each listing of the prize in each place it appears on the notice and in the same size type and boldness as the prize;
- c) a conspicuous statement, in at least ten (10) point boldface type, explaining that a person is required to view, hear, or attend a sales presentation in order to claim a prize that has been awarded;
- d) limitations on eligibility in at least ten (10) point boldface type.

8. After receiving the "Draw Poker" prize notice referred to in paragraph six (6), Powell scratched the card and revealed a winning poker hand.

9. After discovering that she had a winning hand, Powell called Air Tech as directed on the back of the prize notice to make arrangements for determining and claiming her prize. An employee of the Defendant obtained Powell's contact information and told her to expect a call shortly thereafter to schedule delivery of the prize.

10. On or about July 1, 2005, Powell telephoned the Defendant again because she had not been contacted regarding her winning prize notice. During this conversation, an employee of Defendant told Powell that a meeting would be scheduled shortly thereafter to arrange delivery of the prize.

11. The Defendant failed to give a prize to Powell.

12. On or about July 22, 2005, the Defendant sent a promotional mailing to Mary Beth Jareski of Flat Rock, Indiana (hereinafter "Jareski"). The mailing included a prize notice that stated the following: "Free Which Do You Like Best!"; and "You have been selected to receive 8 liters of Coke or Pepsi subject to the rules of our company."

13. The prize notice mailed by the Defendant to Jareski failed to include the following disclosures required by Promotional Gifts and Contests, Ind. Code §§ 24-8-2-2 through 24-8-2-8:

- a) the name and address of the promoter and the sponsor of the promotion;
- b) the verifiable retail value and a statement of odds for each prize in immediate proximity with each listing of the prize in each place it appears on the notice and in the same size type and boldness as the prize;
- c) a conspicuous statement, in at least ten (10) point boldface type, explaining that a person is required to view, hear, or attend a sales presentation in order to claim a prize that has been awarded.

14. After receiving the prize notice referred to in paragraph twelve (12), Jareski called Air Tech as directed on the prize notice to make arrangements for claiming her prize. An employee of Defendant scheduled a meeting at Jareski's home to deliver her prize and demonstrate one of Defendant's vacuum cleaners.

15. On or about July 22, 2005, Mike Hardin (hereinafter "Hardin"), an employee of the Defendant, visited Jareski's residence to deliver her prize and attempt to sell one of Defendant's products to Jareski.

16. During his sales presentation, Hardin made the following representations about the Tri-Star MG1 vacuum cleaner that he was attempting to sell to Jareski: (1) that it also acted as an air purifier; (2) that it also acted as a leaf blower; (3) that it would not need vacuum bags for normal usage; and (4) that it had a comprehensive lifetime warranty.

17. After the sales presentation, Hardin convinced Jareski to purchase a vacuum cleaner and gave her four (4) two(2)-liter bottles of soda.

18. On or about July 22, 2005, Jareski signed a "Retail Purchase Agreement" for the purchase of a Tri-Star MG1 model vacuum cleaner and paid Nine Hundred Dollars (\$900.00) to the Defendant. A true and correct copy of Defendant's contract with Jareski is attached and incorporated by reference as Exhibit "A". The Agreement contained a "Notice of Cancellation" permitting Jareski to cancel the contract for any reason within three (3) business days and receive a full refund.

19. Contrary to the representations set forth in paragraph sixteen (16) above, the vacuum cleaner purchased by Jareski only had a lifetime warranty on the die-case metal body and the die-case metal parts and not on the entire product, the manufacturer's recommendations

did not include usage as a leaf blower or air purifier, and the user's manual indicated that bags should be used in the vacuum.

20. On July 25, 2005, Jareski executed the Notice of Cancellation form and mailed it to the Defendant via certified mail.

21. On or about July 26, 2006, Defendant received Jareski's Notice of Cancellation.

22. Defendant failed to return the Nine Hundred Dollar (\$900.00) payment to Jareski within ten business (10) days of receiving her executed Notice of Cancellation.

23. Defendant's employees stated to Jareski that in order to receive a refund she had to bring the vacuum unit to Defendant's office in Seymour to have it inspected. Defendant's employees told Jareski that Defendant could not travel to Jareski's residence to provide a refund and take possession of the vacuum.

24. Defendant failed to take possession of the Tri-Star MG1 vacuum cleaner within twenty (20) days of receiving Jareski's executed Notice of Cancellation.

COUNT I: VIOLATIONS OF THE PROMOTIONAL GIFTS AND CONTESTS ACT

25. The Plaintiff realleges and incorporates by reference the allegations contained in paragraphs one (1) through twenty-four (24) above.

26. By sending written notices to Indiana residents offering property or a chance to obtain property based on a representation that the person has been awarded or may have been awarded a prize, the Defendant conducted a "promotion" as defined by Ind. Code § 24-8-2-5.

27. By conducting a "promotion" as defined by Ind. Code § 24-8-2-5, the Defendant acted as a "promoter" as defined by Ind. Code § 24-8-2-4.

28. By failing to include in the prize notices mailed to Powell and Jareski the disclosures required by the Promotional Gifts and Contests Act, the Defendant violated Ind. Code §§ 24-8-3-2, 24-8-3-5, 24-8-3-6, and 24-8-3-8.

29. By failing to present Powell with a prize or substitute prize, the Defendant violated Ind. Code § 24-8-5-1.

COUNT II: VIOLATIONS OF THE HOME SOLICITATION SALES ACT

30. The Plaintiff realleges and incorporates by reference the allegations contained in paragraphs one (1) through twenty-nine (29) above.

31. The Defendant is a “supplier” as defined by Ind. Code § 24-5-10-6.

32. By conducting a consumer transaction that was not solicited by Jareski and that resulted from direct contact by the Defendant at Jareski’s residence, the Defendant engaged in a “home consumer transaction” as defined by Ind. Code § 24-5-10-4.

33. By failing to return to Jareski the Nine Hundred Dollar (\$900.00) payment she made to Defendant within ten (10) business days of receiving Jareski’s executed Notice of Cancellation, the Defendant violated the Home Solicitation Sales Act, Ind. Code § 24-5-10-12.

34. By failing to take possession of the vacuum cleaner within twenty (20) days of receiving Jareski’s executed Notice of Cancellation, the Defendant forfeited her legal right to repossess the unit.

COUNT III: VIOLATIONS OF THE DECEPTIVE CONSUMER SALES ACT

35. The Plaintiff realleges and incorporates by reference the allegations contained in paragraphs one (1) through thirty-four (34) above.

36. The transactions referred to in paragraphs six (6), twelve (12), and eighteen (18) are “consumer transactions” as defined by Ind. Code § 24-5-0.5-2(a)(1).

37. The Defendant is a “supplier” as defined by Indiana Code § 24-5-0.5-2(a)(3).

38. The violations of the Indiana Promotional Gifts and Contests Act referred to in paragraphs twenty-eight (28) and twenty-nine (29) constitute deceptive acts pursuant to Ind. Code § 24-8-6-3.

39. The violation of the Indiana Home Solicitation Sales Act referred to in paragraph thirty-three (33) constitutes a deceptive act pursuant to Ind. Code § 24-5-10-18.

40. By representing to Jareski that the Tri-Star MG1 vacuum cleaner came with a comprehensive lifetime warranty when in fact it only had a limited lifetime warranty on some of the product’s parts, the Defendant made a false representation in violation of the Indiana Deceptive Consumer Sales Act, Ind. Code § 24-5-0.5-3(a)(8).

41. By representing to Jareski that the Tri-Star MG1 vacuum cleaner was designed to be used as a leaf blower and an air purifier and by representing that the vacuum cleaner did not require vacuum bags when the Defendant knew or reasonably should have known that these claims were false, the Defendant misrepresented the characteristics, uses, and benefits of the consumer transaction in violation of the Indiana Deceptive Consumer Sales Act, Ind. Code § 24-5-0.5-3(a)(1).

42. By representing to Jareski that she had to take the vacuum to Defendant’s place of business in order to receive a refund, when the Retail Purchase Agreement stated that Jareski only needed to make the vacuum available in her residence for re-possession, the Defendant misrepresented the characteristics of the consumer transaction in violation of the Indiana Deceptive Consumer Sales Act, Ind. Code § 24-5-0.5-3(a)(1).

COUNT IV: KNOWING AND INTENTIONAL VIOLATIONS OF THE DECEPTIVE
CONSUMER SALES ACT

43. The Plaintiff realleges and incorporates by reference the allegations contained in paragraphs one (1) through forty-two (42) above.

44. The misrepresentations and deceptive acts set forth above were committed by the Defendant with knowledge and intent to deceive.

RELIEF

WHEREFORE, the Plaintiff, State of Indiana, requests the Court enter judgment against the Defendant, enjoining the Defendant from the following:

- a. In the course of conducting promotions in Indiana, failing to include the disclosures required by the Promotional Gifts and Contests Act, Ind. Code §§ 24-8-3-2 through 24-8-3-8, in the promotional prize notices delivered to consumers;
- b. in the course of conducting promotions in Indiana, failing to provide a prize to the consumer after representing that the consumer had won a prize, or failing to offer to the consumer a substitute prize pursuant to the terms of Ind. Code § 24-8-5-1(a) if the prize the consumer won is not available;
- c. in the course of conducting home consumer transactions, failing to provide a full refund within ten (10) business days to consumers that properly execute the Notice of Cancellation within the prescribed cancellation period;

d. in the course of conducting consumer transactions, representing that the transaction involves or does not involve a warranty, a disclaimer of warranties, or other rights, remedies, or obligations, if the representation is false and if the Defendant knows or reasonably should know that it is false;

e. re-possessing or attempting to re-possess the Tri-Star MG1 vacuum cleaner from Jareski based on Defendant's failure to take possession of the unit within twenty (20) days of receiving Jareski's Notice of Cancellation; and

f. in the course of conducting consumer transactions, representing expressly or by implication that a consumer transaction has sponsorship, approval, performance, characteristics, accessories, uses, or benefits it does not have which the Defendant knows or should reasonably know it does not have.

AND WHEREFORE, the Plaintiff, State of Indiana, further requests the Court enter judgment against the Defendant for the following relief:

- a. cancellation of the Defendant's unlawful contracts with consumers, including but not limited to Mary Beth Jareski, pursuant to Ind. Code § 24-5-0.5-4(d);
- b. costs pursuant to Indiana Code § 24-5-0.5-4(c)(3), awarding the Office of the Attorney General its reasonable expenses incurred in the investigation and prosecution of this action;
- c. restitution on behalf of Mary Beth Jareski in the amount of Nine Hundred Dollars (\$900.00);
- d. on Count III of the Plaintiff's complaint, civil penalties pursuant to Indiana Code § 24-5-0.5-4(g) for the Defendants' knowing violations of the Deceptive

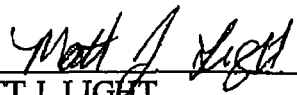
Consumer Sales Act, in the amount of Five Thousand Dollars (\$5,000.00) per violation, payable to the State of Indiana;

- e. on Count III of the Plaintiff's complaint, civil penalties pursuant to Indiana Code § 24-5-0.5-8 for the Defendants' intentional violations of the Deceptive Consumer Sales Act, in the amount of Five Hundred Dollars (\$500.00) per violation, payable to the State of Indiana; and
- f. all other just and proper relief.

Respectfully submitted,

STEVE CARTER
INDIANA ATTORNEY GENERAL
Attorney no. 4150-64

By:


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RETAIL INSTALLMENT AGREEMENT

Date of Agreement: 7/22/05

BUYER refers to all persons signing this Agreement as Buyer (called You, Your, and Yours)

CREDITOR (called Seller or We, Us, and Our):

AIR TECH DISTRIBUTING/INDIANA MANUFACTURING

311 N. ELMWOOD ST.

Address

EVANSTON

City

IN

State

46714

Zip Code

Buyer 1's Name: MARY SAKESKY

Buyer 1's Address

City

State and Zip

N/A

Buyer 2's Name

N/A

Buyer 2's Address

City

State and Zip

I. AGREEMENT COVERAGE

We sell and you buy the following Goods and/or Services:

| Description of Goods and/or Services | Manufacturer | Model No. | Serial No. | Cash Sales Price |
|--|---------------------------|-----------|------------|------------------|
| ONE TRI STAR FILTRATION SYSTEM AND ATTACHMENTS | TRI STAR ENTERPRISES, LLC | MG 1 | 02968 | \$ 900.00 |
| | | | | Sales Tax \$ INC |

II. ITEMIZATION OF AMOUNT FINANCED

| | |
|---|-----------|
| 1) Cash Sales Price (including Sales Tax) | \$ 900.00 |
| 2) Total Downpayment (a+b) | \$ 900.00 |
| a) Cash Downpayment | \$ 900.00 |
| b) Trade-In | \$ 0.00 |
| N/A (Description) | |

5) AMOUNT FINANCED (3+4) \$ 0.00
N/A "SAME AS CASH" OPTION FOR WAIVER OF FINANCE CHARGE.
If the full Amount Financed is paid within N/A days, the Finance Charges shown on this Agreement will be waived. Buyer understands that monthly payments must be made during this time, and that all terms of this Agreement will apply.
Buyer's Initials: N/A Buyer's Initials: N/A

| | |
|---|---------|
| 3) Unpaid Balance of Cash Price (1-2) | \$ 0.00 |
| 4) Amounts paid to Others on your Behalf: | \$ 0.00 |
| To Public Officials | \$ 0.00 |

N/A 90 DAYS DELAYED PAYMENT/60 DAYS DELAYED FINANCE CHARGE:
During the promotional period of 60 days, no Finance Charges will be imposed on your purchase and no payments are due for 90 days after agreement date.
Buyer's Initials: N/A Buyer's Initials: N/A

III. DISCLOSURES OF YOUR CREDIT COSTS

ANNUAL PERCENTAGE RATE:
The cost of your credit as a yearly rate.

21.00%

FINANCE CHARGE: The dollar amount the credit will cost you.

\$ 0.00

Amount Financed: The amount of credit provided to you or on your behalf.

\$ 0.00

Total of Payments: The amount you will have paid after you have made all payments as scheduled.

\$ 900.00

Total Sale Price: The total cost of your purchase on credit, including the total of your downpayment and trade-in.

\$ 0.00
\$ 900.00

| Your payment schedule will be: | | |
|--------------------------------|--------------------|----------------------------------|
| No. of Pmts. | Amount of Payments | When Payments are Due (MM/DD/YY) |
| 1 | \$ 900.00 | Monthly Beginning E* 7/22/05 |
| N/A | \$ N/A | N/A |

Security: You are giving a security interest in the goods you are purchasing.
Late Charge: If we receive an installment 10 days or more after the date it is due, we shall charge you a late charge of \$11.
Prepayment: If you pay off early, you may be entitled to a refund of part of the Finance Charge.
See the Agreement for additional information about nonpayment, default, acceleration of payments and prepayment refunds.
*E means an estimate: We estimate the payment due dates as your first payment will be due 30 days after delivery or installation of the goods, and you must make all other payments on the same day of each month thereafter.

NOTICE TO THE BUYER: 1. DO NOT SIGN THIS AGREEMENT BEFORE YOU READ IT OR IF IT CONTAINS BLANK SPACES. 2. YOU ARE ENTITLED AN EXACT COPY OF THE AGREEMENT YOU SIGN.

YOU ACKNOWLEDGE RECEIPT OF AN EXACT COPY OF THIS AGREEMENT AND THAT YOU HAVE READ ALL TERMS INCLUDING THOSE ON THE REVERSE S

| | | | | |
|--|----------------------|--------------------------|----------------------|------|
| Signature of Seller | Signature of Buyer 1 | Date | Signature of Buyer 2 | Date |
| E. M. Hardin | [Signature] | 7/22/05 | N/A | |
| To be delivered to - If different than buyer's address | | Projected Delivery Date: | | |
| N/A | | N/A | | |

SALES MADE AT HOMES OR AT CERTAIN OTHER LOCATIONS:

If this transaction is a door-to-door or home solicitation sale as defined in the Federal Trade Commission Trade Regulation Rule concerning Cooling-Off Period For Sales Made At Homes Or At Certain Other Locations, or state law, YOU THE BUYER MAY CANCEL THIS TRANSACTION AT ANY TIME PRIOR TO MIDNIGHT OF THE THIRD BUSINESS DAY AFTER THE DATE OF THIS TRANSACTION. SEE THE ATTACHED NOTICE CANCELLATION FORM FOR AN EXPLANATION OF THIS RIGHT.

Notice of Cancellation 7/22/05
(enter date of transaction)

You may CANCEL this transaction, without any Penalty or Obligation, within THREE BUSINESS DAYS from the above date. If you cancel, any property traded in, any payments made by you under the agreement or sale, and any negotiable instrument executed by you will be returned within TEN BUSINESS DAYS following receipt by the Seller of your cancellation notice, and any security interest arising out of the transaction will be cancelled. If you cancel, you must make available to the Seller at your residence, in substantially as good condition as when received, any goods delivered to you under this agreement or sale; or you may, if you wish, comply with the instructions of the Seller regarding the return shipment of the goods at the Seller's expense and risk.

If you do make the goods available to the Seller and the Seller does not pick them up within 20 days of the date of your Notice of Cancellation, you may retain or dispose of the goods without any further obligation. If you fail to make the goods available to the Seller, or if you agree to return the goods to the Seller and fail to do so, then you remain liable for performance of all obligations under the Agreement.

To cancel this transaction, mail or deliver a signed and dated copy of this Cancellation Notice or any other written notice, or send a telegram,

to AIR TECH DISTRIBUTION / INDIANA MANUFACTURING
(Name of Seller)

at 311 N. Ewing St.
(Full Address of Seller's place of business)

NOT LATER THAN MIDNIGHT OF 7/24/05
(Date)

I HEREBY CANCEL THIS TRANSACTION.

7-24-05 [Signature]
(Date) (Buyer's Signature)

BUYER - 2ND COPY